

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of)	
)	
Universal Service Fund &)	WC Docket Nos. 11-42, 10-90, 07-135, 05-337, 03-109
)	CC Docket No. 01-92, 96-45
Intercarrier Compensation)	CN Docket No. 09-51, 96-45
)	
Transformation; Lifeline)	
)	
& Link Up Reform)	

**JOINT COMMENTS OF
THE STANDING ROCK SIOUX TRIBE
AND
STANDING ROCK TELECOMMUNICATIONS, INC.
ON PROPOSED REFORM OF UNIVERSAL SERVICE, LIFELINE, AND LINK UP**

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I. Introduction

The FCC has asked for comment on proposals to reform the Universal Service Fund and other high-cost support by shifting resources and focus to broadband under the new umbrella Connect America Fund and “modernizing” the Lifeline and Link Up programs. We support bringing the benefits of modern broadband technology to Indian country and the rest of the United States, and especially to low-income consumers. However, any significant changes in the FCC’s subsidy programs will have major consequences in Indian Country and carry some unknown risks, and the Commission has a duty to see that tribes are not harmed or left out in the transition.

Tribal communities are among the least served by 21st-century telecommunications networks, or even 20th-century telecommunications networks. As the National Congress of American Indians (“NCAI”) commented in a recent, related proceeding, “Traditional economic drivers have proven ineffective in bringing telecommunications services to Indian country.” NCAI Comments in Docket No. 10-208, at 9 (Dec. 16, 2010). FCC Chairman Genachowski noted in his March 2010 remarks to the NCAI that Indian country has less than a 70% adoption rate for any telephone service. Broadband penetration in Indian country is only 10%, according to recent FCC testimony to the U.S. Senate. The high build-out costs and the limited financial resources of many residents of Indian country have left our communities out. Targeting needed financial support to tribal lands for telecommunications infrastructure is a matter that affects the very health and well-being of our residents – including access to health and emergency care, educational opportunities, and economic development. In short, expanding telecommunications networks – including broadband – into tribal communities will dramatically change lives for the better in Indian country, and in some cases, will save lives.

As the FCC has properly acknowledged in this and other proceedings, the Federal government has a unique and special obligation toward Indian tribes. We urge the FCC to meet this obligation by focusing special attention on the needs of tribes, tribal members, and residents of Indian reservations and communities in any transition to broadband support. Because the proposed actions represent a major shift in policy and resources affecting tribal areas, the FCC should engage in broad consultation with tribes on these issues.

In considering the reallocation of subsidies toward broadband, the FCC should make sure tribal areas are not harmed and continue to receive much-needed support for basic telecommunications services and mobile networks, in addition to newer broadband technology. Existing tribal exemptions and levels of support, such as the Tribal lands exclusion from the current cap on high-cost support, should be preserved to the greatest extent possible. Critical Lifeline and Link Up support must not be diminished in underserved tribal areas, because access to even basic services in these areas is still sorely lacking. Multiple users per residence should be eligible for these programs in tribal areas. Allocation of broadband or other resources to high-cost tribal areas should also not be based on reverse-auction mechanisms, but rather based on factors that help direct resources toward the true needs of tribal communities and residents. For highest-cost tribal areas, satellite service should be one option, but because of satellite's lower quality, speed limitations, and high frequency of disruption, satellite service should only be considered as redundant coverage for safety purposes, rather than the sole or primary service.

As it considers broad change, we urge the FCC to continue and expand its support for the efforts of tribes – like Standing Rock – that have taken initiative as governments to launch projects to expand wired networks, to build mobile infrastructure projects, and to bring broadband to Indian country. If the FCC does begin to shift significant resources in a new

Connect America Fund toward broadband, this effort should include a set-aside for broadband penetration projects by tribal carriers in tribal areas, and tribal carriers should receive a preference in any separate Native Broadband Fund.

II. The Standing Rock Sioux Tribe and Standing Rock Telecommunications, Inc.

A. The Standing Rock Sioux Tribe.

The Standing Rock Sioux Tribe (“SRST” or the “Tribe”) is a federally-recognized Indian tribe, with approximately 9,000 members. The Standing Rock Reservation is a sparsely populated rural Reservation that lies partly in South Dakota and partly in North Dakota, and covers some 2.3 million acres. The Reservation’s population is approximately 8,500 people, including both Tribal members and non-member residents. The population density on the Reservation is 3.7 persons per square mile in the North Dakota portion of our Reservation, and 1.7 persons per square mile in the South Dakota portion of our Reservation. Despite some recent gains, our Reservation continues to suffer from chronic poverty and high unemployment, with a persistent unemployment rate above 50%. Our rural location and lack of adequate infrastructure of all kinds – including roads, water and sanitation as well as telecommunications – contribute to the economic challenges faced by the Tribe. Due to these economic circumstances, over 70% of our households are eligible for support through the Lifeline and Link Up programs. In addition, our Reservation has a broadband penetration rate of only 50%.

B. Standing Rock Telecommunications.

With both landline and mobile service severely lacking on the Reservation, the Tribe recently took it upon itself to launch its own Tribal telecommunications company and network. Standing Rock Telecommunications, Inc. (“SRTI”) is 100% owned by the Tribe. In August

2010, SRTI was designated an “Eligible Telecommunications Carrier (“ETC”) for a portion of the Reservation, and in July 2011 became an ETC for the entire Reservation.

SRTI has purchased bandwidth and invested in the basic telecommunications infrastructure that was lacking on the Reservation – starting with 17 cellular towers. SRTI initially launched mobile service in 2010, and today serves over 900 wireless customers on the Reservation. FCC Chairman Genachowski highlighted and applauded the Tribe’s initiative in his March 2010 remarks to the National Congress of American Indians. SRTI has more recently secured a grant to begin rolling out 4G mobile broadband starting later this year. SRTI’s services provide a vast improvement over the prior service on the Reservation in terms of quality and coverage. But SRTI recognizes that we have just begun our efforts and that more is needed to provide the full measure of high quality telecommunications – including broadband – that the Standing Rock Reservation needs and deserves.

III. The FCC should engage in broad tribal consultation on these significant changes.

As the Commission acknowledged in the initial Notice of Proposed Rule-Making in Docket 10-90 (Feb. 8, 2011), the proposals being considered represent a “fundamental” shift in the policies surrounding subsidized telecommunications infrastructure and networks. Any such changes are certain to have a substantial impact on tribal areas, which are among the poorest and most under-served areas in the nation, and thus highly subsidized.

The Commission has also acknowledged its special duties toward Indian tribes on many occasions, including the necessity to focus resources and attention toward tribal areas, where telecommunications infrastructure and access are sorely lacking and where changes to general Commission rules can have drastic and perhaps unintended consequences. For example, in implementing part of the National Broadband Plan, the Commission in 2010 created the Office

of Native Affairs and Policy. The purpose of this new Office, as described by Office Chief Geoffrey Blackwell in his recent testimony to the Senate, is as follows:

The Office is charged with bringing the benefits of a modern communications infrastructure to all Native communities by, among other things, ensuring robust government-to-government consultation with Federally-recognized Tribal governments and other Native organizations; working with Commission, Bureaus, and Offices, as well as with other government agencies and private organizations, to develop and implement policies for assisting Native communities; and ensuring that Native concerns and voices are considered in all relevant Commission proceedings and initiatives.

Written Statement of Geoffrey Blackwell to Senate Committee on Commerce, Science, and Transportation, at 2 (Apr. 5, 2011).

However, the current notice and comment process does not provide tribes with sufficient time to study or provide input on these fundamental shifts in subsidies and how they will affect our tribal areas. For example, the comment periods for each Public Notice at issue here was a total of only 21 calendar days, and FCC denied an extension of time requested by several parties. If the FCC plans to move forward with these proposed changes to the Universal Service Fund, Lifeline, Link Up, and other high-cost support, the Commission should first engage in broad consultation with Indian tribes. This would be in keeping with the FCC's mandate, as well as the Federal government's broad tribal consultation policy. *See, e.g.*, Executive Order No. 13,175 (2000); 74 Fed. Reg. 57,881 (2009).

IV. The FCC should ensure that tribal areas are not harmed by a shift in priorities and resources toward broadband.

A. Existing support in tribal areas should not decrease as a result of the proposed shifts.

As mentioned above, tribal areas have less than a 70% adoption rate of any phone service. Moreover, tribal areas are left underserved by the normal market mechanisms due to high cost and therefore require governmental support to launch and expand service. This means

that a shift in Connect America Fund resources toward broadband carries with it the danger that critical support could be disrupted in tribal areas. To lessen this risk, the FCC should commit that under any new formulae or reallocation of Connect America Fund resources, support in tribal areas and support for tribal carriers will not decrease. In many ways, tribal areas are still catching up to other regions, and loss of critical support risks leaving tribes even further behind. Whatever changes are made by the FCC, they must not accrue to the detriment of Indian Country.

For example, the Tribal lands exclusion to the current cap on high-cost support should be maintained. SRTI is earning substantial funding each month in high-cost support. This amount is the total of the high-cost subsidies received for each line at each wire center serving the Reservation. Based on the difficulty and cost of build-out in these wire center areas, the subsidy ranges from \$24 per line in some Reservation communities up to \$52 per line in others. SRTI is relying heavily on this monthly high-cost support to provide continued telecommunications service to Reservation communities.

In addition, SRTI estimates that approximately 70% of Reservation households are currently eligible for Lifeline and Link Up support. This support includes activation fees and a monthly service fee, which is sufficient to cover, at a minimum, voice service. SRTI plans to utilize Lifeline and Link Up funding for the range of cellular service as well, including calls, text, and internet access. Now that the FCC has finally designated SRTI as an ETC for the entire Reservation, SRTI will be eligible to utilize these programs to provide critical funds for increasing the penetration of key telecommunications services across the Reservation.

B. Satellite service should be considered for highest-cost tribal areas as a backup or secondary service only.

The “ABC Plan” submitted by several carriers suggests relying on satellite broadband to serve extremely high-cost areas. Tribal areas are likely to be some of the highest-cost areas in the nation for expanding any telecommunications services. Satellite service should certainly be one option. However, satellite typically provides lower quality connection and limitations on speed. In addition, storms and other phenomena disrupt satellite connections frequently. Therefore, satellite service should only be considered as redundant coverage for safety purposes, rather than a candidate for the sole or primary service. The FCC should remain committed to providing wired and wireless service to tribal areas, as well.

C. A reverse-auction mechanism will not serve the needs of Indian country.

The Commission’s August 3rd “Further Inquiry” also asks for particular comment on ViaSat’s proposal to distribute support for extremely high-cost areas through a combination of a reverse auction and consumer vouchers, in order to obtain service from wireless, satellite, or other providers. We disagree with a reverse auction approach for any telecommunications build-out in Indian country, for all the reasons set forth in our Comments submitted May 4, 2011 on the proposed Tribal Mobility Fund in Docket No. 10-208. A reverse auction approach will only add service on the margins of existing service, rather than supporting infrastructure where it is most sorely needed. FCC support for any telecommunications infrastructure in Indian country should instead be based on factors that will meet the needs of Indian country. In Docket 10-208, we recommended that the FCC base its decision-making for Tribal Mobility Fund proposals on factors including the following:

- A factor based on current landline telephone, mobile, and broadband penetration in the proposed reservation coverage area – so that the lower the percentage of current penetration of these networks, the higher the score;
- A factor based on the increase in total reservation population coverage – so that the greater the proposal’s increase in percentage of population covered, the higher the score;
- A factor based on the increase in geographic coverage – so that the greater the proposal’s increase in total percentage of reservation covered, the higher the score;
- A factor that increases the score by a certain number of points if the proposal would “close the loop” by reaching 100% coverage in a given reservation (by population, by geography, or both);
- A factor based on poverty rates in the proposed coverage area – so that the greater the poverty rate, the higher the score;
- A factor based on average travel distance of the residents in the proposed coverage area to health care, emergency services, and other governmental services – so that the greater the distance to these essential services, the higher the score;
- A factor based on whether the proposed coverage area includes so-called “anchor” institutions, such as a tribal government headquarters office, emergency services, schools, hospitals, and clinics – so that the inclusion of one or more anchor institutions increases the score by a certain number of points; and
- A factor that increases the score by a certain number of points if the provider is tribally-owned or tribally-controlled.

This is not meant to be an exhaustive list. These factors apply equally well to the Tribal Mobility Fund proposals at issue in Docket No. 10-208 or to support for any other telecommunications infrastructure proposals in Indian country.

D. Lifeline and Link Up service should together continue to provide for both activation and regular service in tribal areas.

As described above, SRTI estimates that approximately 70% of Reservation households are currently eligible for Lifeline and Link Up support, and now that SRTI has been designated as an ETC for the Reservation, SRTI plans to utilize Lifeline and Link Up funding for the range of cellular service, including calls, text, and internet access. SRTI is thus already working to meet the objectives of the Commission to utilize Lifeline and Link Up for more modern telecommunication hookups for consumers. However, in order to accomplish this, SRTI will be

relying on Lifeline and Link Up to subsidize not only the activation cost, but also monthly service for low-income residents. The programs should continue to work in tandem to provide this support.

E. *Lifeline and Link Up service should provide support for multiple tribal residents per household.*

While we appreciate the Commission's concerns about potential fraud and waste in the Lifeline and Link Up programs, we support the eligibility of multiple users per tribal household, especially because these programs are now providing mobile as well as landline access. Access to cell phones is a matter of safety on the Reservation. It is common for extended families with multiple employed persons to share a single address and household. Driving is a necessity for both work and school in almost all tribal areas, and Indian country experiences higher rates of fatal traffic accidents than elsewhere in America. Under those circumstances, placing arbitrary limits on the per-household subsidy for mobile activation and monthly service for low-income individuals puts lives at risk. We agree with other commenters that the marginal cost of allowing more than one eligible user per household in tribal areas is virtually insignificant, but the safety benefits and savings are substantial.

V. **If the FCC approves a shift in resources to broadband, the FCC should establish a set-aside for projects that fund broadband penetration in tribal areas by tribal carriers.**

Due to the unique situation of tribal areas and the extremely low levels of broadband penetration, we agree with the comments of Gila River Telecommunications, Inc. (submitted Apr. 18, 2011) and Native Telecom Coalition for Broadband (submitted Apr. 18, 2011) that the FCC should create a separate Native Broadband Fund for tribal areas. Moreover, the Commission should support tribal carriers in particular. Faced with the lack of private telecommunications infrastructure development, some tribes – like the SRST – took it upon

themselves to start building up a telecommunications network in recent years. As mentioned above, with the support of the SRST, SRTI was able to first launch its mobile network service on the Reservation just last year, in 2010. Such tribal initiatives require substantial investment of time and resources. SRTI has already begun working on the rollout of 4G mobile broadband, for example, using grant and other funds. The FCC should respect these sovereign governmental choices and support the initiative that these tribes have taken to help their communities access modern telecommunications networks. Relying in significant measure on the existing subsidy scheme, the Tribe and SRTI took substantial risks to finally bring service to our communities where the private market had failed. With this investment now starting to benefit the Reservation community, any shift in FCC policies and support must not serve to undermine these choices. Supporting tribal carriers also preserves competition in the marketplace.

Supporting these tribal initiatives is in keeping with the Commission's goal "to place Native Nations themselves in the center of [telecommunications] solutions, whether it is through actual self-provisioning of communications services or through new 'Tribal-' or 'Native-centric' methods of deployment with industry, public, or private partners." Blackwell Statement, *supra*, at 3. If the Commission chooses to shift the focus and critical resources of the umbrella Connect America Fund toward broadband, a dedicated amount of funding should be set aside to fund broadband penetration projects by tribal carriers in tribal areas. Tribal carriers should also be provided a preference in projects funded by a separate Native Broadband Fund.

VI. Conclusion

We support the bringing modern telecommunications service to our communities, and we look forward to continuing to work with the FCC to ensure that Indian Country – which has so

often been left behind in the past – has greater opportunities to benefit from modern telecommunications in the future.

Respectfully submitted,

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